IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

MONDAY, THE 9TH JULY 2007 / 18TH ASHADHA 1929

WP(C).No. 20521 of 2007(R)

PETITIONER:

M/S HARIES INDUSTRIAL ENGINEERING,
CHENAKAL, CALICUT UNIVERSITY P.O.,
MALAPPURAM DISTRICT, REP. BY ITS MANAGING
PARTNER, P.AHAMED.

BY ADV. SRI.T.M.SREEDHARAN
SRI.V.P.NARAYANAN

RESPONDENTS:

---

1. THE SALES TAX OFFICER(WC & LT),
OFFICE OF THE DEPUTY COMMISSIONER,
DEPARTMENT OF COMMERCIAL TAXES,
MALAPPURAM DISTRICT.

2. THE DEPUTY TAHSILDAR(R.R),
KOZHIKODE.

3. THE DEPUTY COMMISSIONER,
COMMERCIAL TAXES, MALAPPURAM.

BY G.P. SRI.C.K. GOVINDAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 09/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.N.RAMACHANDRAN NAIR,J.

W.P.C. NO. 20521 OF 2007

Dated this the 9th day of July, 2007

JUDGMENT

Petitioner is challenging Ext.P4 order issued under Section 19(1) of the KGST Act revising original assessment completed for the year 2001-02. It is seen that revised assessment is made only to revise the original assessment completed at lower rate of tax on the ground that higher rate of tax is payable for the work executed by the petitioner. Even though notice was issued, the petitioner could not raise proper objections because according to him, he was under the impression that assessment pertains to luxury tax. Reply given by the petitioner produced in Court substantiates this misunderstanding. The work undertaken by the petitioner is stated to be flooring work for the Airport Authority, which was done with tiles purchased from a reputed manufacturer locally by paying tax. According to the petitioner, since the tax is borne on purchase of tiles, which is transferred in the same form to the awarder, the turnover should have been excluded. I find force in this contention. If the tiles have borne tax in Kerala, then it cannot be subjected to tax again because it is transferred in the same

form to the awarder. Since petitioner has not filed appeal and since patent mistake is committed in the revised assessment, I direct the Officer to revise Ext.P4 in rectification proceedings after verifying the documents to be produced by the petitioner. W.P. is accordingly disposed of with direction to the petitioner to produce bills, contract, and other documents before the first respondent for rectification of Ext.P4. First respondent is directed to verify the records produced by the petitioner, and go through Ext.P4, and carry out rectification, within six weeks from the date of production of a copy of this judgment, so that revised assessment is consistent with statutory provision. If the petitioner has any grievance, petitioner can file appeal against revised orders. Petitioner will produce copy of judgment and records and co-operate in the enquiry. Revenue recovery proceedings will be kept in abeyance for two months and thereafter recovery will be based on revised orders to be issued. If the petitioner does not co-operate in the enquiry or fails to produce documents to substantiate his case, recovery can be made based on revised assessment, namely, Ext.P4 after two months.

(C.N.RAMACHANDRAN NAIR)
Judge